

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Case No. 19-CR-67
) Green Bay, Wisconsin
 vs.)
) July 29, 2020
 XENGXAI YANG,) 1:32 p.m.
)
 Defendant.)
)

**TRANSCRIPT OF TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES SENIOR DISTRICT JUDGE**

APPEARANCES:

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UNITED STATES OF AMERICA:

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1 TRANSCRIPT OF PROCEEDINGS

2 Transcribed From Audio Recording

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4 THE COURT: This is Judge Griesbach, and this is
5 United States of America v. Xengxai Yang, Case No. 19-CR-67.
6 This is a telephone conference with counsel concerning further
7 proceedings. Attorney -- Mr. Maier, you're on the line.

8 MR. MAIER: I am. Good afternoon, Your Honor.

9 THE COURT: Good morning. Assistant United States
10 Attorney Andrew Maier for the Government, and Attorney Thomas
11 Phillip for the defendant. Mr. Phillip, you're there too.

12 MR. PHILLIP: Yes, thank you.

13 THE COURT: Now, since we last talked about this case
14 or had a hearing on it, Mr. Phillip has received the report from
15 Dr. Johnson that concludes that Mr. Yang was likely suffering
16 from a mental disease or defect that rendered him not
17 responsible as I understand it at the time of the event, and
18 Mr. Phillip has on that basis filed a Motion to Withdraw the
19 Guilty Plea. Is that right, Mr. Phillip?

20 MR. PHILLIP: Yes.

21 THE COURT: And Mr. Maier, does the Government intend
22 to oppose that motion?

23 MR. MAIER: It does, Your Honor.

24 THE COURT: Okay. So you can file then a brief or
25 we're under the any fair and just recent standard; is that

1 right?

2 MR. MAIER: It is, Your Honor.

3 MR. PHILLIP: Yes, Your Honor.

4 THE COURT: Mr. Maier, do you wish to file a written
5 argument on that?

6 MR. MAIER: I would, Judge. I don't think it will
7 have to be very long, but I would like to file something in
8 writing in response.

9 THE COURT: How much time would you need?

10 MR. MAIER: I can have it filed by the end of next
11 week.

12 THE COURT: Okay. That sounds good. So that would be
13 like August 3rd or nope I am in the wrong month. Let's see
14 here. That would be --

15 MR. PHILLIP: The 7th of August is the end of next
16 week.

17 THE COURT: Thank you. August 7th. And Mr. Phillip,
18 you would reply by --

19 MR. PHILLIP: Yes, I would like leave to reply. My
20 own scheduling issue about a reply is that I have a week long
21 vacation starting on August 10th through the 14th. And I am
22 hoping to have no access to the Internet during that time. Of
23 course if the Court requires a response, I can -- I can come
24 back, but I would ask leave from the Court to have my reply due
25 say perhaps either the 19th or 20th?

1 THE COURT: Okay.

2 MR. PHILLIP: And again the only reason is I'll be on
3 vacation. I don't think I would really need 14 days to reply.
4 It's just that I plan to be out of the office.

5 THE COURT: Well, Mr. Phillip, I don't recall your
6 last vacation, so I'm sure you don't take enough. I'm not going
7 to interfere with it.

8 MR. PHILLIP: Thank you, I appreciate that.

9 THE COURT: The 20th is fine. And frankly, Mr. Maier,
10 if you want a little more time since Mr. Phillip hopefully won't
11 be reading it over that week, you can go to the 12th let's say.

12 MR. MAIER: Okay. Thank you.

13 THE COURT: And then I'll go ahead and issue a
14 decision then and set up further proceedings. Frankly, it
15 depends on whether the motion is granted or not. If it is
16 granted, we'll have to set the case -- Mr. Phillip, am I
17 correct there's not a question as to whether your client's able
18 to or competent to proceed. This is a defense -- a substantive
19 defense for the crime itself?

20 MR. PHILLIP: Correct. There is not an issue of
21 competency. There is just the issue of insanity. And the Court
22 is correct, the very first decision regards the Motion to
23 Withdraw the Plea. If the Court denies that, well then we would
24 go ahead with sentencing because a guilty plea was already
25 entered. But if the Court grants that, then we would have to

1 move onto the issue of filing the notice of the insanity defense
2 and then scheduling what I would predict if I can get way ahead
3 of myself scheduling what would probably be a court trial. But
4 again, there's several hurdles to jump before that comes up.

5 THE COURT: I would first be ordering another exam,
6 wouldn't I?

7 MR. PHILLIP: Well, I think the Court --

8 THE COURT: We already have one.

9 MR. PHILLIP: Right, I think that -- Yes, the Court
10 has one that was prepared by Dr. Berney that prior counsel
11 entered the not guilty by reason of insanity before. And so it
12 might be that the parties would each have their report, and then
13 the -- the trial again if we get that far might just boil down
14 to the two experts testifying about the defendant's mental state
15 at the time. So again, I'm getting ahead of myself. I
16 apologize.

17 THE COURT: Right, but it's probably helpful. I
18 understand, Mr. Maier, is that there are others on the line that
19 have either been present at the time of the robbery that would
20 be considered the victims of the offense; is that right?

21 MR. MAIER: Yes, Your Honor.

22 THE COURT: It is good that they hear that. Of
23 course, you know, we did take the guilty plea, but he withdraw
24 or we appointed new counsel at the request, and this is what
25 Mr. Phillip was tasked with doing, so we'll see where it goes.

1 All right. I anticipate a quick turn around once this issue is
2 fully briefed, and so I would hope that within a week of the
3 reply I can get you a decision on the Motion to Withdraw. Okay?
4 We'll take it from there. Okay. If there's nothing further
5 then.

6 MR. PHILLIP: Not from me. Thank you.

7 MR. MAIER: Nothing from the Government.

8 THE COURT: Okay.

9 (Whereupon proceeding was concluded.)

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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RMR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified November 19, 2021.

/s/Susan Armbruster

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